

## Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date: May 13, 2008

### Legend

Property =

Taxpayer =

Land Trust =

Father =

Date 1 =

Date 2 =

Date 3 =

a =

b =

Dear :

This is in response to your March 14, 2007 letter and other correspondence concerning the application of § 2032A of the Internal Revenue Code to the proposed sale of a qualified conservation easement by Taxpayer to Land Trust.

The facts submitted are as follows:

Property was owned by Father through a living trust. Property was used primarily as a farm. The primary activities of the farm include, but are not limited to, the milking, feeding, breeding and otherwise supervising and managing of the dairy herd; managing all pastures; and feeding, caring for and otherwise supervising and managing the beef cattle herd and sheep flock.

Father died on Date 1. The executor filed a Form 706, United States (and Generation-Skipping Transfer) Tax Return on Date 2 for the estate of Father and, on Schedule A-1, elected under § 2032A to value Property based on its use as a farm,

rather than its highest and best use. The adjusted value of Property was \$a and the special-use value of Property was \$b.

Upon Father's death, Property passed to Taxpayer. Since Father's death, Taxpayer has continued the operation of the farm on Property. On Date 3, Taxpayer sold the dairy portion of the farm, but continued to operate all other aspects of the farm, including supervising and managing the beef cattle herd and the sheep flock.

Taxpayer proposes to sell a qualified conservation easement on Property to Land Trust. The primary purpose of the easement is to protect the agricultural soils, agricultural viability, and agricultural productive capacity of Property in perpetuity. Land Trust is a public charity described in § 501(c)(3).

You have requested a ruling that the § 2032A(c)(8) exception to § 2032A(c)(1)(A) will apply to the proposed sale of a qualified conservation easement on Property by Taxpayer to Land Trust.

## LAW AND ANALYSIS

Section 2033 provides that the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2032A(a) provides that, if the decedent at the time of his death was a citizen or resident of the United States and the executor elects the application of this section and files the agreement referred to in § 2032A(d)(2), then, for purposes of the estate tax, the value of qualified real property shall be its value for the use under which it qualifies under § 2032A(b) as qualified real property.

Section 2032A(b)(1) provides, in relevant part, that "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family.

Section 2032A(b)(2) provides that the term "qualified use" means the devotion of the property to use as a farm for farming purposes or use in a trade or business other than the trade or business of farming.

Section 20.2032A-3(b)(1) of the Estate Tax Regulations provides that real property valued under § 2032A must pass from the decedent to a qualified heir or be acquired from the decedent by a qualified heir.

Section 2032A(c)(1) provides that if, within 10 years after the decedent's death and before the death of the qualified heir—(A) the qualified heir disposes of any interest

in qualified real property (other than by a disposition to a member of his family), or (B) the qualified heir ceases to use for the qualified use the qualified real property, which was acquired (or passed) from the decedent, then there is hereby imposed an additional estate tax. [Emphasis added].

Section 2032A(c)(8) provides that a qualified conservation contribution (as defined in § 170(h)) by gift or otherwise shall not be deemed a disposition under § 2032A(c)(1)(A). Section 2032A(c)(8) was enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, and is effective for easements granted after December 31, 1997.

Section 170(c)(2)(B) provides, in relevant part, that the term “charitable contribution” means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for charitable purposes.

Under § 170(h)(1), a “qualified conservation contribution” means a contribution-- (A) of a qualified real property interest, (B) to a qualified organization, (C) exclusively for conservation purposes.

Rev. Rul. 59-121, 1959-1 C.B. 121, as clarified by Rev. Rul. 68-291, 1968-1 C.B. 351, holds that the consideration received for the granting of an easement with respect to land constitutes the proceeds from a sale of an interest in real property.

In Estate of Gibbs v. United States, 161 F.3d 242 (3<sup>rd</sup> Cir. 1998), the taxpayer inherited a dairy farm upon the death of taxpayer’s father in 1984. In 1985, the taxpayer filed an estate tax return on behalf of his father’s estate. In that return, pursuant to § 2032A, the taxpayer elected to value the real property component of the farm based on its special use value as farmland instead of its highest and best use for development. On December 21, 1993, the taxpayer and the State of New Jersey executed a “Deed of Easement” pursuant to which New Jersey received a development easement in the farmland and the taxpayer received approximately \$1.4 million. The Court of Appeals for the Third Circuit held that the taxpayer’s conveyance of a development easement in a farm he inherited was a “disposition of an interest” in the farmland, triggering the recapture tax under § 2032A(c)(1).

While the court’s decision in Estate of Gibbs was based upon the plain meaning of the statute, the court also noted the relevant portion of the House Committee Report, addressing the need for the recapture tax provision, as follows:

Also, your committee believes it would be inequitable to discount speculative value if the heirs of the decedent realize these speculative values by selling the property within a short time after the decedent’s death.

H.R. REP. NO. 94-1380, at 22 (1976), 1976-3 C.B. (Vol. 3) 756.

Prior to the effective date of § 2032A(c)(8), it was the Service's position that any conveyance of a conservation easement, including a charitable contribution, would be considered a disposition under § 2032A(c)(1). Section 2032A(c)(8) was enacted by Congress to ensure that the grant of a conservation easement after December 31, 1997, would not trigger the recapture tax under § 2032A(c)(1).

The legislative history of § 2032A(c)(8) is silent regarding the meaning of the phrase "by gift or otherwise" in the statute. However, the term "otherwise" does not necessarily include sales and exchanges of conservation easements for valuable consideration.

Under § 2032A(c)(8), a recapture tax is not imposed in the event of a "qualified conservation contribution," as defined in § 170 (h). Section 170(h)(1) defines a qualified conservation contribution as a "contribution" of a qualified real property interest to a qualified organization exclusively for conservation purposes. The sale or exchange of a conservation easement is not contemplated by § 170(h)(1).

Furthermore, even though the easement in Estate of Gibbs was sold prior to the effective date of § 2032A(c)(8), the court of appeals in Estate of Gibbs stated in dicta that § 2032A(c)(8) would only apply to charitable contributions of conservation easements and not sales of easements for valuable consideration. Estate of Gibbs, 161 F.3d at 250, fn. 7. Therefore, the statute, the legislative history, and case law do not extend the exception of § 2032A(c)(8) to sales. Accordingly, based on the facts presented and the representations made, we conclude that the § 2032A(c)(8) exception to § 2032A(c)(1)(A) does not apply to the proposed sale of a qualified conservation easement on Property by Taxpayer to Land Trust.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter